

Marshall-Edward Mikels
02-17-2015
USA

**NOTICE OF NON-CONSENT
TO THE UNITED STATES PATENT AND TRADEMARK OFFICE
VOIDING "REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/2015
Notice to Agent id Notice to Principal and Notice to Principal is Notice to Agent
Delivered by Certified Mail**

February 17, 2015

From:

Bio Corp's Authorized Representative Marshall-Edward: Mikels,
BIO CORP, A CORPORATION ORGANIZED AND EX
3053 WEST CRAIG ROAD, SUITE E-124
NORTH LAS VEGAS, NV 89032

Delivered by respond to

Stacey L Mack [Notary Public]
205 Mount Shasta Blvd.,
Suite 400,
Mount Shasta CA 96067

To Addressee(s)/Respondent(s)/Debtor:

DEBORAH COHN, in Official capacity and Deborah Cohn in individual capacity

Commissioner of Trademarks United States
and assigned Director

Patent and Trademark Office

600 Dulany Street

Alexandria, VA 22314,

Delivered by Certified Mail 7013 2250 0001 5791 6353

To Addressee(s)/Respondent(s)/Debtor:

TOBY ELLEN BULLOFF, Esquire, in Official capacity and

Toby Ellen Bulloff in individual capacity

Examining Attorney for the United States

Patent and trademark Office

Law Office 119, 600 Dulany Street

Alexandria, VA 22314

(571) 270-1531

toby.bulloff@uspto.gov

Delivered by Certified Mail 7013 2250 0001 5791 6216

NOTICE OF NON-CONSENT
TO THE UNITED STATES PATENT AND TRADEMARK OFFICE
VOIDING "REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/2015 in
Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575



02-23-2015

Appeal Board

C/O Dawnmarie D. Sanok

Attorney Advisor

Office of the Deputy Commissioner

for Trademark Examination Policy

dawn-marie.sanok@uspto.gov

571-272-9577 (O)

Delivered by Certified Mail 7013 2250 0001 5791 5882

OPPOSING PARTY

To Addressee(s)/Respondent(s)/Debtor:

Mir Innovations, Inc. CORPORATION TEXAS

GREG CLARK Executive Officer, official capacity

And, Greg Clark, individual capacity

534 CONTINENTAL DRIVE, LEWISVILLE TX 75067,

And, Greg Clark CEO Alpha Men's Edge Nutrition, Inc.

2701 Little Elm Pkwy Ste 100 #527 Little Elm, TX 75068 and 534 CONTINENTAL

DRIVE, LEWISVILLE TX 75067, Delivered by First Class Mail

**Re: Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER:
85/819575, NOTICE: LETTER OFFICE ACTION BY: TOBY E.
BULLOFF DATED 01-16-2015. REQUEST FOR
RECONSIDERATION DENIED, previously REMANDED TO
APPEAL: C/O Dawnmarie D. Sanok DATED 11/21/2014**

**Re: Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER:
85/819575, NOTICE: APPLICATION ABANDONED BY: Toby E.
Bulloff DATED 11-21-2014. AND,
PETITION TO DIRECTOR, DISMISSED, and REMANDED TO
APPEAL BY: Dawnmarie D. Sanok DATED 11/21/2014**

**Re: NOTICE OF NON-CONSENT TO "NOTICE: APPLICATION
ABANDONED" VOIDING AND WITHOUT EFFECT "PETITION
TO DIRECTOR DISMISSED" dated 11/21/2014**

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AFFIDAVIT

"Indeed, no more than affidavits are necessary to make the prima facie case." United States v. Kis, 658 F.2d, 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982

1. TO ALL CONCERNED the undersigned Affiant, Marshall-Edward: Mikels, does solemnly swear, declare and state as follows:
2. Affiant is competent to state the matters set forth herein.
3. Affiant has personal knowledge of the facts stated herein.
4. Those matters not within the personal knowledge of Affiant or law are based upon information, belief and public record.
5. All the facts herein are true, correct and complete, admissible as evidence and if called upon as a witness, Affiant will testify to their veracity.
6. The Respondent(s)/Debtor(s) agree with Marshall-Edward: Mikels' aforementioned claims and the following.
7. I Marshall-Edward: Mikels have indefeasible title to my land and I am the lawful owner of the landed estate known as MARSHALL EDWARD MIKELS, including all versions/combinations of the all cap entity and owner of its trusts, bonds, real property and interest and is the Authorized Representative for MARSHALL MIKELS ***-**-8951, for Bio Corp, a Delaware corporation and a real party in interest.
8. In any matter in state or federal court, Marshall-Edward: Mikels will appear as an officer and the Authorized Representative for BIO CORP/Bio Corp under FRCP, Rule

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17, and under Delaware Supreme Court Rule 57 as referenced below.

9. I make this Affidavit in support of this Presentment.

10. In any matter in State or Federal Court, Department, Office or Agency Marshall-Edward: Mikels will make a Special Attendance Rogatory as one of the sovereign People of the United States of America with all power and authority inherently retained and is the Authorized Representative for Bio Corp and MARSHALL EDWARD MIKELS and will respond for the claimant(s) without relinquishing any unalienable private sovereignty Right hereby and previously exercised and claimed by the Affiant. Affiant will not assume any obligation for MARSHALL EDWARD MIKELS or any combination of the all CAP entity without the right to setoff from its assets claimed and owned by Marshall-Edward: Mikels. In addition, the Respondent(s)/Debtor(s) agree Affiant shall have the authority and power to issue a Writ of Mandamus as a Superior Court of Record to compel action or performance of the lower state and federal courts referenced previously and herein in this or any matter in connection therewith.

11. All of the filings, applications and registrations in this matter are incorporated herein for all purposes by this reference.

12. TO ALL CONCERNED, be informed that Marshall-Edward Mikels was on vacation from 01/06/15 until 01/29/15 and unavailable to receive any mail or notice from the USPTO until 02/16/15 and that Mikels has not received any mail or email from the

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USPTO to date regarding the subject *"OFFICE ACTION BY: Toby E. Bulloff DATED 01-16-2015. REQUEST FOR RECONSIDERATION DENIED"*.

13. On 02/16/2015 Affiant went th the USPTO's website case file for the Exparte Appeal of Serial number 8581975 and noticed the subject office action by TOBY ELLEN BULLOFF, Esquire, examining attorney in the above referenced U.S. Trademark Application No. 85819575 entitled *"REQUEST FOR RECONSIDERATION DENIED"* and the *"PROCEEDINGS RESUMED"* by Nicole Thier, Paralegal Specialist: dated filed 01/09/15 and mailed on 01/22/15 that states:

" In view of the decision by the Trademark Examining Attorney on January 16, 2015, the appeal is resumed; and applicant is allowed until sixty days from the mailing date hereof in which to file its brief herein. A request for an oral hearing, if desired, must be made not later than ten days after the due date for applicant's reply brief. "

14. The the subject *"OFFICE ACTION BY: Toby E. Bulloff DATED 01-16-2015. REQUEST FOR RECONSIDERATION DENIED"*. is hereby returned with Affiant's and Bio Corp's non-consent to contract offer of *"REQUEST FOR RECONSIDERATION DENIED dated 01/16/2015"*, which voids it and renders it unlawful and without effect. The returned *"REQUEST FOR RECONSIDERATION DENIED dated 01/16/2015"* is returned with the following handwritten Notice:

"AFFIDAVIT" applicable to all pages 1 through 5
RECEIVED ON 02-16-2015 AND RETURNED ON 02-17-15 CANCELLED BY NON-CONSENT TO CONTRACT OFFER OF THE" USPTO " "OFFICE ACTION (OFFICIAL LETTER) "REQUEST FOR RECONSIDERATION DENIED, ISSUE

NOTICE OF NON-CONSENT
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Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575

MAILING DATE: 01/16/2015" "U.S. APPLICATION SERIAL NO. 85819575" BY: TOBY E. BULLOFF IS CANCELLED WITHIN 3 DAYS OF RECEIPT AND IS VOID, UNLAWFUL AND WITHOUT EFFECT ON APPEAL OR OTHER. USPTO AND ADDRESSEE(S)/RESPONDENT(S)/DEBTOR(S) ARE SUBJECT TO A DEFAULT IN DISHONOR AND SECURITY AGREEMENT CLAIM #0296, DATED MAY 27, 2014 AND SUBJECT TO THEIR OATH OF OFFICE, THE U.S. CONSTITUTION UP TO AND INCLUDING THE ORIGINAL 13TH AMENDMENT. ALL RIGHTS RESERVED U.C.C. AND CONSTITUTION BY: Marshall-Edward: Mikels". See, the returned "REQUEST FOR RECONSIDERATION DENIED dated 01/16/2015" by Toby E. Bulloff incorporated herein by this reference and attached hereto as **Exhibit 1**.

APPEAL IS PENDING PER THE 11/21/2014 Dawnmarie D. Sanok Attorney Advisor Office of the Deputy Commissioner:

1. *Letter of 11/21/2014 Dawnmarie D. Sanok The file will be remanded to the TTAB to consider the October 4, 2014 paperwork as a timely filed notice of appeal to the final Office action issued on April 4, 2014. In accordance with TTAB normal procedures, the TTAB will institute the appeal and process it in accordance with the TTAB practices and procedures.* And the letter "by Nicole Thier, Paralegal Specialist: dated filed 01/09/15
2. Any request for reconsideration is not an offer by bio corp or Marshall Edward: Mikels for acceptance by the USPTO or for Toby E. Bulloff. the "request for reconsideration denied" is void by non-consent to the contract offer and is unlawful and without effect on the appeal, the existing Default in Dishonor Court of Record Judgment and Security Agreement Claim #0296 or other.
3. The BIO CORP/Mikels' Petition/Appeal was filed on 10-04-2014.
4. The parties are subject to "Default Judgment notice of final Default in Dishonor Affidavit of entry into commercial contract, liability and Security Agreement Claim #0296, dated May 27, 2014.
5. The Petition and Appeal are offers to reduce the party's liabilities under the Security Agreement Claim #0296.
6. The Appeal and Petition do not re-open the Default Judgment Contract Security Agreement Claim #0296.
15. The reasoning by Bulloff for issuing the office action of 11/21/14 is:

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"The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The refusal made final in the Office action dated April 4, 2014 and November 21, 2014 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. In this case, both marks consists of a design of a stylized Vitruvian man, which is the famous Leonardo Da Vinci drawing of a naked man with arms and legs spread inside of a circle, showing the perfect proportions of the human figure against geometry. See the previously attached information from www.wikipedia.org. There are only slight differences in applicant's mark and the cited mark, namely, that the cited mark has its Vitruvian man flexing its biceps. But at first or quick glance, the marks look highly similar as pencil-type drawings inspired by the Da Vinci drawing. Both drawings show the Vitruvian man with the same facial features and hair, torso, legs spread apart and together at the same angles. Also, both marks contain the circular and square borders intersecting at the same points. The only difference is that applicant's mark is a precise copy of the Da Vinci artwork with the arms stretched out to the square's borders, while registrant's mark shows the man flexing its arm muscles. Noting how small both of these logos are likely to be depicted on packaging for dietary supplements, and indeed, how small the drawing is shown on applicant's and registrant's specimens, the small differences between the marks become even less significant. The examining attorney disagrees with applicant's characterization of the cited mark as a "significantly altered" version of the Vitruvian man. Even if potential purchasers realize the apparent differences between the marks, they could still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that applicant's goods sold under the Vitruvian man design constitute a new or additional product line from the same source as the goods sold under the "Flexing" Vitruvian man design with which they are acquainted or familiar, and that applicant's design is merely a variation of the above. This could be especially true if applicant's line of supplements includes certain products for muscle growth and enhancement and products for other purposes, and would use the "Flexing" Vitruvian man to denote its muscle growth supplements and its "regular" Vitruvian man for its other purposes unrelated to muscle strength and development. See, e.g. SMS, Inc. v. Byn-Mar Inc. 228 USPQ 219, 220 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line

*of clothing.”). Applicant’s arguments relating to its ownership of the same mark for the same goods (Reg. No. 2964648) are unpersuasive, as this registration was cancelled prior to applicant’s filing for the current application. It should also be noted that the examining attorney assigned to Serial No. 85670760, (which is now Reg. No. 4332952) searched the register for conflicting marks on October 27, 2012, a month after applicant’s prior registration had been cancelled. Therefore, applicant’s prior registration would never have appeared on the register as a potentially conflicting cite likely to cause confusion. Applicant’s prior registration containing the same design mark, scaled down to accommodate the dominant wording NATURAL YOUTH FORMULA I, No. 2068276 did co-exist on the register with the cited registration; however, the additional wording in the mark was likely sufficient to distinguish its mark from the cited registration. Regardless, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. TMEP §1207.01(d)(vi); see *In re Midwest Gaming & Entm’t LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case is decided on its own facts, and each mark stands on its own merits. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Binion* 93 USPQ2d 1531, 1536 (TTAB 2009).*

Accordingly, the request is denied.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. See 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. See TMEP §715.04(a). “

Bio Corp and Affiant do not consent to Bulloff’s “REQUEST FOR
RECONSIDERATION DENIED” which voids the actions and reasons referenced above

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by timely non-consent recorded with the 72 hour period therefore the Bulloff office action is void, unlawful and without effect.

16. In addition, Bio Corp and Affiant Mikels stand on the Supreme Law of the U.S. Constitution and a contract agreement to protect the property Rights of the Bio Corp and Mikels' Trademark(s) Rights which supersede any U.S. code, including the U.S. codes, statutes, case opinion, rules or other cited by Bulloff. These U.S. codes, statutes, case opinion, rules or other only have the force of law if they are agreed to by Bio Corp/Mikels and no agreement has been made expressly or otherwise by Mikels or Bio Corp to give these Codes the force of law. The supremacy clause of the Constitution nullifies any law made by Congress that conflicts with the Constitution. Therefore, Article 1, Section 10 of the Constitution prohibits any impairment of contract: "*No State shallpass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.*" (I-9-3 and I-10) Protection against piracy (I-8-10) trademark property Rights are protected by (I-8-8) And, the parties are subject to the Security Agreement Contract Claim #0296, dated May 27, 2014 referenced herein and the U.S. Constitution which is another binding contract. Also, the original 13th Amendment prohibits any Esquire attorney from holding public office, which would include any contract to represent the USPTO as an examining attorney of behalf of the USPTO or a Deputy Commissioner of the USPTO, therefore, any argument, reasoning or

decision by a BAR Esquire attorney must be voided as a matter of Supreme Law. These established facts will be expanded upon in the Appeal by Affidavit.

17. The other issue that provides a factual basis for approval of the Bio Corp Application No. 85/819575 and Registration is the fact that the Mir Innovations Inc./Alpha Men's Edge Nutrition Application/Registration Number 4332952 conflicts and has a likelihood of confusion with a preexisting Trademark of Bio Corp Registration No. 2068276 currently active in use since 1991-1992. So, the Mir Innovations Inc. Registration Number 4332952 should have never been approved for registration in the first place. And, Bulloff's reasoning that:

"Applicant's prior registration containing the same design mark, scaled down to accommodate the dominant wording NATURAL YOUTH FORMULA I, No. 2068276 did co-exist on the register with the cited registration; however, the additional wording in the mark was likely sufficient to distinguish its mark from the cited registration. Regardless, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board."

Citations that are voided by non-consent, Constitution's Supreme Law and non-applicable:

TMEP §1207.01(d)(vi); see In re Midwest Gaming & Entm't LLC, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing In re Nett Designs, Inc., 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case is decided on its own facts, and each mark stands on its own merits. See AMF Inc. v. Am. Leisure Prods., Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); In re Binion 93 USPQ2d 1531, 1536 (TTAB 2009).

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The above reasoning and citations used by Bulloff are voided and without effect due to her nonsense utilized, the Mikels' non-consent to the contract offer, the original 13th Amendment, the Constitution's Supreme laws partially cited above that nullify any case opinion, code, rule or other device that conflicts with the Rights protections referenced in the Constitution and the Default in Dishonor Court of Record Default Judgment and Security Agreement Bulloff, the USPTO and the other Addressee(s)/Respondent(s)/Debtor(s) are subject to which is res judicata.

18. Therefore, it appears that the USPTO in Bulloff's actions do not want to correct a mistake it made in the approval of the Mir Innovations Inc. Registration Number 4332952 at the detriment and damage to Bio Corp and Affiant. Therefore, any reasoning or U.S. Codes used by the USPTO as a basis for the denial of Bio Corp's Application because it has a likelihood of confusion with the Mir Innovations Inc. Registration is obviously wrong and cannot withstand any reasonable analysis, fact, the Supreme Law and the existing Default in Dishonor Judgment and Security Agreement the parties are subject to. This Appeal by Affidavit is Bio Corp and Mikels' good faith offer to reduce the existing liability.

THEREFORE, for the above stated reasons the Bulloff "*REQUEST FOR RECONSIDERATION DENIED*" dated 01-16-2015 is returned with no consent to contract offer, void and without effect. And, Affiant will file the Appeal brief by Affidavit within the time schedule referenced in the "PROCEEDINGS RESUMED" by

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Nicole Thier, Paralegal Specialist: dated filed 01/09/15 and mailed on 01/22/15 (which the Affiant has not received by mail yet) that states: sixty days from 01/22/15 to file the brief which is the Appeal Affidavit in this case.

The Affiant and Bio Corp do not relinquish any Rights by filing any Appeal and any filing of an Appeal is not an offer to re-contract and does not affect the existing obligations of the parties under the Default Judgment and Security Agreement CLAIM #0296, dated May 27, 2014. The Appeal is made in a good faith effort to correct the mistake of the USPTO and to curtail damages to Bio Corp and Affiant and additional liabilities to the USPTO and the Addressee(s)/Respondent(s)/Debtor(s).

Thank you for you time and attention.

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IN WITNESS WHEREOF I hereunto set my hand and seal on this 17th day of February 2015, and hereby certify, swear and affirm under the law of this contract, commercial law U. C. C., the Supreme law of the Constitution for the United States of America, the Bill of Rights, the Declaration of Independence and other Treaties of the United States of America and the state of California Republic that all the statements made above are true, correct and complete based on my personal knowledge, information and belief.

All Rights Reserved Without Prejudice, Under Reserve U. C. C.

Date: 02-17-2015 Affiant: Marshall-Edward Mikels (Seal)
Marshall-Edward: Mikels, Secured Party/Creditor/Owner of the Claim and Trademark(s) by Contract and Secured Party Interest in Bio Corp.
Marshall-Edward: Mikels, Secured Party/Creditor/Owner of the Landed Estate MARSHALL EDWARD MIKELS / ***-**-8951 or other version of the all CAP entity name and the Authorized Representative For: MARSHALL E. MIKELS, Under FRCP 17 (a)(F) and Bio Corp. The Original 13th Amendment to the Constitution of the United States of America Prohibiting Esquires from Holding Public Office, to the Constitution of the United States of America 1776-1787-1789, Treaties of the United States of America and Postmaster of the document(s) by autographed stamp and seal affixed hereto and void where prohibited by law.

JURAT

State of California)
) ss:
County of Siskiyou)

Subscribed and sworn to (or affirmed) before me on this 17th day of February, 2015, by

Marshall Edward Mikels, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Dustin Bradford Balma
(seal) Dustin Bradford Balma / NOTARY Signature"



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Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575

EXHIBIT 1

AFFIDAVIT

From: Bulloff, Toby

Sent: 1/16/2015 2:05:43 PM

To: TTABEFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 85819575 - N/A - Request for Reconsideration Denied -
Return to TTAB

Attachment Information:

Count: 1

Files: 85819575.doc

UNITED STATES PATENT AND TRADE MARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADE MARK APPLICATION

US APPLICATION SERIAL NO. 8581957

MARK

8581957

CORRESPONDENCE ADDRESS:
MARSHALL L. WARDEN

BIO CORP.

316 W CRAIG RD SUITE 110

NORTH LEBANON, IN 46032

GENERAL TRADE MARK INFORMATION:

<http://www.uspto.gov/trademark/index.jsp>

VIEW YOUR APPLICATION FILE

APPLICANT: Bio Corp. a corporation organized and existing under the laws of the U.S.

CORRESPONDENCE REFERENCE DOCKET NO.

1A

CORRESPONDENCE E-MAIL ADDRESS

biocorp@ncl.com

REQUEST FOR CONSIDERATION DENIED

ISSUE MAILING DATE: 11/13/2014

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The refusal made final in the Office action dated April 4, 2014 and November 21, 2014 are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

In this case, both marks consists of a design of a stylized Vitruvian man, which is the famous Leonardo Da Vinci drawing of a naked man with arms and legs spread inside of a circle, showing the perfect proportions of the human figure against geometry. See the previously attached information from www.wikipedia.org. There are only slight differences in applicant's mark and the cited mark, namely, that the cited mark has its Vitruvian man flexing its biceps. But at first or quick glance, the marks look highly similar as pencil-type drawings inspired by the Da Vinci drawing. Both drawings show the Vitruvian man with the same facial features and hair, torso, legs spread apart and together at the same angles. Also, both marks contain the circular and square borders intersecting at the same points. The only difference is that applicant's mark is a precise copy of the Da Vinci artwork with the arms stretched out to the square's borders, while registrant's mark shows the man flexing its arm muscles. Noting how small both of these logos are likely to be depicted on packaging for dietary supplements, and indeed, how small the drawing is shown on applicant's and registrant's specimens, the small differences between the marks become even less significant. The examining attorney disagrees with applicant's characterization of the cited mark as a "significantly altered" version of the Vitruvian man.

Even if potential purchasers realize the apparent differences between the marks, they could still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that applicant's goods sold under the Vitruvian man design constitute a new or additional product line from the same source as the goods sold under the "Flexing" Vitruvian man design with which they are acquainted or familiar, and that applicant's design is merely a variation of the above. This could be especially true if applicant's line of supplements includes certain products for muscle growth and enhancement and products for other purposes, and would use the "Flexing" Vitruvian man to denote its muscle growth supplements and its "regular" Vitruvian man for its other purposes unrelated to muscle strength and development. See, e.g., *SMS, Inc. v. Byn-Mar Inc.*, 228 USPQ 219, 220 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

Applicant's arguments relating to its ownership of the same mark for the same goods (Reg. No. 2964648) are unpersuasive, as this registration was cancelled prior to applicant's filing for the current application. It should also be noted that the examining attorney assigned to Serial No. 85670760, (which is now Reg. No. 4382952) searched the register for conflicting marks on October 27, 2012, a month after applicant's prior registration had been cancelled. Therefore, applicant's prior registration would never have appeared on the register as a potentially conflicting cite likely to cause confusion. Applicant's prior registration containing the same design mark, scaled down to accommodate the dominant wording NATURAL YOUTH FORMULA, No. 2068276 did co-exist on the register with the cited registration; however, the additional wording in the mark was likely sufficient to distinguish its mark from the cited registration. Regardless, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. *TMEP* §1207.11(d)(vi); see *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing *In re New Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case is decided on its own facts, and each mark stands on its own merits. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 444 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009).

Accordingly, the request is denied.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. See 37 C.F.R. §2.64(b); *TMEP* §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. *TMEP* §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal. See *TMEP* §715.04(a).

VOID

/Toby E. Bulloff/

Trademark Examining Attorney

Law Office 11

(571) 270-6631

toby.bulloff@uspto.gov

1 Marshall-Edward: Mikels, Secured
2 Party/Creditor/Owner of the Claim and
3 Trademark(s) by Contract and Secured Party
4 Interest in Bio Corp, and, Authorized
5 Representative For: MARSHALL E. MIKELS,
6 Under FRCP 17 (a)(F) and Bio Corp.
7 **Mailing Address:** Bio Corp,
8 3053 West Craig Road, Suite E-124
9 North Las Vegas, NV 89032 without U.S.
10 530-918-4162 biocorp@nctv.com

11 **PROOF OF SERVICE**

12 **UNITED STATES PATENT AND TRADEMARK OFFICE**

13 BIO CORP and MARSHALL E. MIKELS

14 **APPLICATION SERIAL NO. 85819575**

15 Petitioner/Appellant

16 v.

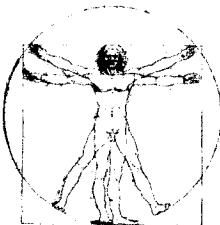
17 **NOTICE OF AND AFFIDAVIT OF NON-**
18 **CONSENT AND VOIDING OF THE**
19 **EXAMINING ATTORNEY'S OFFICE**
20 **ACTION "REQUEST FOR**
21 **RECONSIDERATION" DATED 01/16/15**
22 **AND, APPEAL FOR REVERSAL OF FINAL**
23 **REFUSAL OFFICE ACTION AND**
24 **REGISTRATION OF U.S. APPLICATION**
25 **SERIAL NO. 85819575.**

26 UNITED STATES PATENT AND
27 TRADEMARK OFFICE,
MIR INNOVATIONS INC., GREG CLARK
And. ALPHA MEN'S EDGE NUTRITION, INC.

Respondent

1. At the time of service I was over eighteen (18) years of age and not a party to this action.
2. My residence or business address is: 610 Alder Street, Mount Shasta CA 96067.
3. On February 18 , 2015, I served the following documents by mail:

IN REFERENCE TO:



Bio Corp's Trademark used since 1991 and claimed in use since April 15, 1992 in
Registration Number 2964648. Renewal Application 85819575 filed on January 9th 2013, suspended by

NOTICE OF NON-CONSENT
TO THE UNITED STATES PATENT AND TRADEMARK OFFICE
VOIDING "NOTICE" "REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/15 in
Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575

USPTO April 29th 2013, refused on May 13, 2013 on the basis of "likelihood of confusion" with Mir Innovations Inc.'s mark shown in Exhibit 3 and a copy of the Bio Corp prior trademark design used in its application 85819575 and the USPTO acknowledgement response attached to the 1st Presentment dated February 8, 2014 as Exhibit 2.

DOCUMENT(S) SERVED

**NOTICE OF NON-CONSENT AND VOIDING OF
THE UNITED STATES PATENT AND TRADEMARK OFFICE
VOIDING OFFICE ACTION OF "REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/15
IN REF TO: THE APPEAL FOR REVERSAL OF FINAL REFUSAL OFFICE ACTION AND
REGISTRATION OF U.S. APPLICATION SERIAL NO. 85819575**

From: APPLICANT

BIO CORP. a Delaware Corporation

Bio Corp's Authorized Representative Marshall-Edward: Mikels, Bio Corp,
3053 West Craig Road, Suite E-124

North Las Vegas, NV 89032 without U.S.

Delivered by respond to

Stacey L Mack [Notary Public]

205 Mount Shasta Blvd.,

Suite 400,

Mount Shasta CA 96067

To Addressee(s)/Respondent(s)/Debtor:

DEBORAH COHN, in Official capacity and

Deborah Cohn in individual capacity

Commissioner of Trademarks United States

and assigned Director

Patent and Trademark Office

600 Dulany Street

Alexandria, VA 22314,

Delivered by Certified Mail 7013 2250 0001 5791 6353

Appeal Board

C/O Dawnmarie D. Sanok

Attorney Advisor

Office of the Deputy Commissioner

for Trademark Examination Policy

dawn-marie.sanok@uspto.gov

571-272-9577 (O)

Delivered by Certified Mail 7013 2250 0001 5791 5882

To Addressee(s)/Respondent(s)/Debtor:

TOBY ELLEN BULLOFF, Esquire, in Official capacity

and Toby Ellen Bulloff in individual capacity

Examining Attorney for the United States

Patent and trademark Office

Law Office 119, 600 Dulany Street

Alexandria, VA 22314

(571) 270-1531

toby.bulloff@uspto.gov

Delivered by Certified Mail 7013 2250 0001 5791 6216

OPPOSING PARTY

To Addressee(s)/Respondent(s)/Debtor:

Mir Innovations, Inc. CORPORATION TEXAS

GREG CLARK Executive Officer, official capacity

And, Greg Clark, individual capacity

534 CONTINENTAL DRIVE, LEWISVILLE TX
75067,

And, Greg Clark CEO Alpha Men's Edge Nutrition,
Inc.

2701 Little Elm Pkwy Ste 100 #527 Little Elm, TX

75068 and 534 CONTINENTAL DRIVE,

LEWISVILLE TX 75067, Delivered by First Class
Mail

**NOTICE OF NON-CONSENT
TO THE UNITED STATES PATENT AND TRADEMARK OFFICE
VOIDING "NOTICE" "REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/15 in
Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575**

1 4. I served the documents on the person or persons above, as follows:

2 Name of person served Respondent(s) referenced above:

3 5. Business or residence addresses where the person or persons were served as indicated above to
4 the party, opposing parties, their attorney, or other.

5 6. By first class U.S. Mail delivery as shown above. I enclosed the documents in a sealed envelope
6 or package addressed to the persons shown above, or in care of their attorney/agent above by
7 depositing the sealed envelope or package with the U. S Postal Service, with the postage fully
8 prepaid and/or by FAX.

9 I declare under the penalty of perjury that the foregoing is true and correct on this 18th day of
10 February 2015.

11 Declarant: By Uriel Bramah (Seal)

12 Print Name Uriel Bramah
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27

NOTICE OF NON-CONSENT

TO THE UNITED STATES PATENT AND TRADEMARK OFFICE

VOIDING "NOTICE: REQUEST FOR RECONSIDERATION DENIED" DATED 01/16/2015 in

Bio Corp Trademark U. S. APPLICATION SERIAL NUMBER: 85/819575